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February 23, 2000

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FEB 23 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: MM Docket No. 99-339
Video Description of Video Programming

Dear Ms. Salas:

Transmitted herewith on behalf of Grupo Televisa, S.A. are an original and nine (9) copies of its Comments on the *Notice of Proposed Rulemaking* (FCC 99-353, released November 18, 1999) in the above-referenced proceeding.

Diskettes containing these Comments are being simultaneously submitted to Wanda Hardy and to International Transcription Services, Inc.

In connection with its representation of Grupo Televisa, S.A., Leventhal, Senter & Lerman P.L.L.C. has registered as a foreign agent under the Foreign Agents Registration Act.

Please date-stamp the enclosed "Return Copy" of this filing and return it to the courier delivering the package.

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LEVENTHAL, SENTER & LERMAN P.L.L.C.

Ms. Magalie R. Salas
February 23, 2000
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Should there be any questions concerning this matter, please contact the undersigned.

Respectfully yours,

A handwritten signature in black ink, appearing to read "J.D. Poutasse", with a stylized flourish at the end.

John D. Poutasse

Enclosures

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Implementation of)	MM Docket No. 99-339
Video Description of)	
Video Programming)	
To: The Commission		

COMMENTS OF GRUPO TELEVISA, S.A.

Grupo Televisa, S.A. ("Televisa"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby comments on the Commission's Notice of Proposed Rulemaking, FCC 99-353 (released November 18, 1999) ("NPRM") in the above-captioned proceeding.

I. Introduction

Televisa, a Mexican corporation, is the largest producer of Spanish-language television programming in the world. During the first nine months of 1999 alone, Televisa produced over 32,000 hours of programming for broadcast, and licensed over 50,000 hours of programming to countries throughout the world. Pursuant to a long-term programming license agreement with the Univision Television Network ("Univision"), the largest Spanish-language television broadcast company operating in the United States, programming produced by Televisa reaches more than 92% of the Spanish-speaking households in the United States. As a consequence, Televisa has a

substantial interest in the outcome of this proceeding. Televisa urges the Commission to decline to adopt mandatory rules for description of video programming, or at a minimum, specifically exempt foreign-language programming produced outside the United States (“Foreign-Language Programming”) from the scope of any video description rules it may adopt.

II. The Commission Should Decline To Adopt Rules Mandating Description of Video Programming.

Unlike closed captioning, where Congress directed the Commission to promulgate such regulations as are necessary to provide closed captioned programming for the hearing impaired,¹ no legislative mandate exists for the Commission to adopt regulations requiring the description of video programming. Instead, Congress merely instructed the Commission to “commence an inquiry” into the use of video description and to “report to Congress on its findings.”² Absent an explicit Congressional directive, the Commission should forbear from interfering in the workings of the competitive marketplace and instead allow market forces of supply and demand to determine when and to what degree video programming should be described.

III. Program Distributors, Not Producers, Should Be Held Responsible For Compliance With Any Video Description Rules That May Be Adopted.

In the event that the Commission nevertheless adopts rules requiring that certain video programs be described, Televisa agrees with the Commission’s conclusion that video

¹ 47 U.S.C. § 613(b).

² Id. at § 613(f).

programming distributors, such as broadcast stations and cable operators, not program producers, should be held responsible for compliance with such rules. In the closed captioning proceeding, the Commission stated that “[b]y holding distributors responsible for captioning, there typically will be a single entity to which complaints must be addressed, and there will be no need for tracking the entities responsible for producing programs alleged to violate the rules.”³ As the Commission has properly concluded, this reasoning is equally applicable to implementing the proposed video description rules.⁴

IV. The Commission Should Permanently Exempt Foreign-Language Programming From Any Video Description Requirements.

It is clear that Foreign-Language Programming, such as Televisa’s Spanish-language programming, would not fall within the scope of the Commission’s initially proposed video description rules. The Commission has proposed to require broadcasters that are affiliated with one of the four largest English-language networks (ABC, CBS, Fox and NBC) in Nielsen’s top 25 Designated Market Areas (“DMAs”), as well as “larger” multichannel video programming distributors (“MVPDs”), to provide a minimum of 50 hours per calendar quarter (or approximately four hours per week) of described prime time and/or children’s programming.⁵

³ Closed Captioning and Video Description of Video Programming, 13 FCC Rcd 3272, 3286 (1997).

⁴ NPRM at ¶ 23. However, Televisa agrees with the Commission that, as a practical matter, it would be more efficient and economical for program producers to describe video programming at the production stage.

⁵ Id. at ¶ 20.

The larger MVPDs would be required to carry the described programming of the broadcasters affiliated with these top four English-language networks and of nonbroadcast networks that reach 50% or more of MVPD households.⁶

Foreign-Language Programming, with its comparatively small target audiences, certainly would not be among the types of video programs that would be earmarked for description during this proposed initial phase of the video description rules. However, the Commission noted in the NPRM that it “expects to increase the amount of required described programming over time”⁷ Although the NPRM does not address how the Commission anticipates achieving that goal, Televisa believes that there is no basis to mandate video description of Foreign-Language Programming. Indeed, Televisa submits that because the burden of describing such programming far outweighs the potential benefits to be derived from such description, all Foreign-Language Programming should be categorically exempt from any requirement to provide video descriptions.⁸

⁶ Id.

⁷ Id. at ¶ 21.

⁸ This request is fully consistent with the Commission’s proposal to waive its video description rules if the application of such rules would result in an “undue burden.” Id. at ¶ 33.

A. Producers of Foreign-Language Programming Lack The Equipment, Expertise and Access To Financial Resources Necessary To Describe Video Programming.

Foreign program producers -- the entities that would in all probability actually provide descriptions for Foreign-Language Programming -- have little or no experience with describing video programming. For example, to the best of Televisa's knowledge, the equipment necessary to describe video programming is not widely available in Mexico and no producers of video programming currently describe their video product in that country. Moreover, to the best of Televisa's knowledge, there are currently no private suppliers of video description services in Mexico.

Although the Commission has taken into consideration the cost of video description in the United States, such cost estimates are wholly irrelevant for program producers in countries like Mexico that currently lack the ability to describe video programming. For example, Televisa estimates that it would incur approximately \$100,000 in equipment costs in order to commence providing descriptions for its video programming. Moreover, because production budgets for Spanish-language programming produced outside the United States normally are significantly smaller than those for English-language programming produced in this country, the hourly describing costs, which the Commission estimates to be approximately \$3,400 per hour,⁹ would represent a much larger percentage of overall Mexican program production costs than would be the case in the United States.

⁹ Id. at ¶ 15.

These cost considerations become all the more significant in light of the fact that producers of Foreign-Language Programming would not have access to the same financial resources to describe their video product as exist, or will exist, in this country. In the United States, the Department of Education has been a major source of funding for WGBH's Descriptive Video Service.¹⁰ In contrast, financial support for video description does not exist in Mexico. More significantly, even if the Commission were to require that Spanish-language programming be described, it is very unlikely that such funds would become available because, to the best of Televisa's knowledge, the vast majority of television sets in Mexico are not SAP-equipped. In addition, because the standard of living in Mexico and most other countries to which Televisa exports its programming is generally lower than in the United States, television sets are not replaced as frequently as they are in this country. Because television viewers in Mexico generally would be unable to access video descriptions even if they were inclined to do so, there is absolutely no incentive for the Mexican government, corporate advertisers or charitable organizations in that country to supply funds for video description. Consequently, producers of Foreign-Language Programming like Televisa would have to bear the full cost of describing such programs.

¹⁰ See www.wgbh.org/wgbh/access/dvs/ (visited February 16, 2000).

B. Mandatory Description Of Foreign-Language Programming Would Reduce The Diversity Of Programming Available In The United States.

As noted, the Commission plans to hold video programming distributors, not program producers, responsible for compliance with its planned video description rules. However, as the Commission correctly recognized, it is clearly more efficient for program owners and producers to describe video programming at the production stage.¹¹ In light of the anticipated inability of Foreign-Language Programming producers to obtain financial assistance to defray the significant expense that video description would entail, such owners and producers might well be forced to discontinue the production of programming for which the economic return is outweighed by the cost of production with descriptions, thus reducing the diversity of programming available both in the United States and abroad.

It also is economically inefficient to describe Foreign-Language Programming. Foreign-language programs frequently are licensed to distributors in more than one country; for example, Televisa's programming can be seen in approximately 70 countries. However, only one of those countries -- the United States -- may require such programs to be described. As a result, the added cost of describing Foreign-Language Programming could not be passed on to all distributors of such programming, but only to those in the United States, representing but a fraction of Televisa's worldwide distribution network. It is therefore likely that U.S. distributors of such programs would elect to eliminate from their programming schedules those programs for which the cost of video descriptions would represent an uneconomical expenditure when

¹¹ NPRM at ¶ 25.

compared with anticipated revenues from that program. Accordingly, the diversity of Foreign-Language Programming available in the United States would further decline.

C. The Potential Market For Described Foreign-Language Programming Is Inadequate To Justify The Costs Associated With Video Description.

Although the Commission estimates that there are between 8 million and 12 million persons with visual disabilities in the United States that may benefit from description of video programming,¹² the Disability Research and Training Center, a research institute relied upon by the U.S. Government, instead estimates that the number of Americans with visual disabilities that cause some activity limitation is 1.294 million.¹³ Regardless of the figure used, it is clear that the number of persons that are both visually disabled and native speakers of a language other than English is extremely small. The limited number of potential beneficiaries, coupled with the potential costs associated with video description, clearly demonstrate that it would be economically inefficient to mandate description of Foreign-Language Programming.

¹² Id. at ¶ 5.

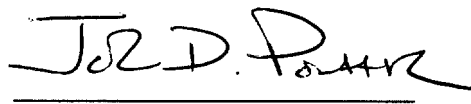
¹³ Disability Statistics Center, U. Cal. San Francisco, <http://dsc.ucsf.edu/> at Table 2 (September 1, 1996). The U.S. Department of Education, at <www.ed.gov>, provides links to this website.

CONCLUSION

For the reasons set forth herein, the Commission should not adopt mandatory rules for video description. In the alternative, the Commission should categorically exempt all Foreign-Language Programming from any such requirements it may adopt.

Respectfully submitted,

GRUPO TELEVISA, S.A.

By: 

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February 23, 2000

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